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In the Supreme Court of the United States

OCTOBER TERM, 1969.

NO. 517

JAMES F. LUMAN,

Petitioner,

vs.

HANS G. TANZLER, JR., ET AL., as and constituting the members of the Police Disciplinary Hearing Board of the City of Jacksonville, a municipal corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

James F. Luman, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in appeal No. 26558 on April 22, 1969.*

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*The members of the Police Disciplinary Hearing Board, appellants in the Court of Appeals and respondents here, are Hans G. Tanzler, Jr., Henry T. Broadstreet, R. R. Burroughs, H. George Carrison, R. Lavern Reynolds, John E. Santora, Jr., and Clyde W. Simpson, Jr.

Citations to Opinions Below

The opinion delivered by the United States District Court for the Middle District of Florida (R. 68-70; App. 1a-2a) in entering the permanent injunction is unreported. The opinion of the Court of Appeals (R. 76-84; App. 3a-9a) is reported in 411 F.2d 164. Both opinions are appended to this petition.

Jurisdiction

The judgment of the Court of Appeals was entered on April 22, 1969 (R. 86). Rehearing was denied on May 28, 1969 (R. 104; App. 10a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Question Presented

Whether, as the Court of Appeals held, the Fourteenth Amendment forbids a municipality to discharge one of its policemen for refusing to answer questions pertaining to his conduct while on duty, and so relieves the policeman, who simultaneously is criminally prosecuted for the same alleged conduct, of the impermissible choice between discharge and self-incrimination.

Constitutional Provisions, State Statutes and Municipal Regulations Involved

This case involves the Fifth and Fourteenth Amendments to the United States Constitution, which provide in part:

> "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."
>
> U.S. Const., Amend. V.

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const., Amend. XIV, §1.

The laws of Florida applicable to the Jacksonville Police Department provide in part:

"No member of the police force, except the chief of police, who has served more than one year shall be removed from the police force without cause. Within ten days after receiving written notice from the chief of police of such removal, any member of the police force so removed, who has served more than one year, may request a public administrative hearing before a police review board hereby established to be known as the 'police disciplinary hearing board', composed of the members of the city commission, the president of the city council and the municipal judge, with the mayor-commissioner or, in his absence, the municipal judge presiding. If no such request is received in writing by the secretary of the city commission, who shall be the recorder for said board, within the time allowed herein, such right of hearing shall be deemed waived and the removal shall be final. Upon receipt of notice of such request for hearing the chief of police, with reasonable dispatch, shall prefer written charges with the police disciplinary hearing board stating the reasons for such removal and the secretary of the city commission shall promptly give such person so removed due notice of the charges and of the time and place of the hearing. On the hearing of a person so removed from the police force, the police disciplinary

hearing board may sustain such removal, or may reinstate such person as a member of the police force, with or without pay, demotion in rank, or suspension without pay, as it may deem just and proper."

Chapt. 65-1747, §5, Laws of Florida 1965.

Rule 5.39 of the Jacksonville Police Department, provides in relevant part that grounds for discharge of a policeman shall include:

"(m) Commission of a criminal act in violation of a State or Federal Statute.

. . .

"(x) Wilful refusal or failure to appear before any court, judge, prosecuting officer, board or body authorized to conduct any hearing or inquiry in any investigation for a violation of any of the statutes of this state when requested to do so; or having appeared, refusal to testify or answer any question concerning his conduct as a police officer or the performance of his duties on the grounds that his testimony or answers would tend to incriminate him; or refusal to waive immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry."

Rule 5.49 of the Jacksonville Police Department provides:

"The Chief of Police may suspend any member of the Department without pay against which a criminal information or indictment has been filed until disposition shall be made of such criminal charges, reporting such suspension forthwith to the Police Disciplinary

Hearing Board for approval or disapproval. In the case the Police Disciplinary Hearing Board shall approve such suspension, the member suspended shall be on enforced leave of absence without pay until disposition is made of the criminal charges against him, and he shall not be entitled to pay for such period of suspension regardless of the outcome of the criminal charges against him. The conviction of said member of such criminal charges shall be cause for his removal as a member of the Department without pay from the time of his suspension."

Statement of the Case

Petitioner, James F. Luman, a policeman of the City of Jacksonville for eleven years, has been suspended from the force without pay since December 8, 1967. Upon Luman's request for an administrative hearing and for restoration to the force, the chief of police charged Luman in writing, before the respondent police disciplinary hearing board, with "conduct prejudicial to the efficiency, good name and reputation of the department" as defined by departmental regulations. The specific charges were that Luman committed acts of larceny and burglary while on duty.

Soon after the administrative charges were lodged against Luman, the State of Florida charged him criminally and began prosecution for the same alleged offenses which were the subject of the administrative complaint. The criminal charges are still pending.

The respondent board thereupon notified Luman that, notwithstanding the pending criminal charges, it would immediately convene the prescribed evidentiary hearing to determine whether Luman should be restored to the force. But,

under the same regulations and the invariable practice of the respondent board, Luman could not and cannot be restored to the force and to his uniform, duties, salary and other perquisites unless and until the State criminal charges are disposed of favorably to him. And at the threatened hearing, Luman would be subject to Rule 5.39(x), under which an officer is subject to removal should he fail to appear at such a hearing or, having appeared, refuse to testify or answer questions concerning his conduct as a policeman "on the grounds that his testimony or answers would tend to incriminate him."

Thus, although the threatened hearing could not result in his restoration to the force, Luman was required to attend respondents' hearing and there testify concerning his conduct as a policeman, which is the subject matter of the State's criminal charges, pending in a court of record.

Being unable and unwilling to guess whether the consequences of testifying at the threatened hearing would be self-incrimination in the State court and whether the consequence of refusing to testify would be his final discharge from the force, Luman, who feared the consequences in either event, complained to the District Court. He asserted that, until a disposition of the State criminal charges is had, the threatened administrative hearing constitutes a threatened deprivation of constitutionally protected rights. Luman therefore prayed that the respondent board be enjoined from holding the hearing until such time as the criminal charges are disposed of, so that, if Luman is acquitted by the State, the administrative hearing could result in his restoration to the force.

The respondent board admitted the factual averments of Luman's complaint, including Luman's claim that the threatened hearing could not then, for the reasons stated, result in his restoration to the force.

The District Court temporarily and then permanently enjoined respondents from conducting the hearing until after trial and disposition of the State criminal charges, ruling that no public interest for the hearing had been shown or suggested and that, in the circumstances, to conduct a hearing would be to subject Luman to impermissible coercion in his constitutionally secured free choice to testify or not.

Respondents appealed to the Court of Appeals for the Fifth Circuit, which read this Court's decision in *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation* (1968), 392 U.S. 280, as condemning Rule 5.39(x) as constitutionally invalid. The Court ruled therefore that Luman does not face the Hobson's choice which he alleged and which the District Court found because, although respondents "may conduct a hearing within the confines of the charges against Luman which relate to the performance of his official duties" (App. 9a), Luman is "forearmed with the fact that he *cannot be discharged for refusing to testify*" (App. 8a-9a, emphasis added.) The Court ruled flatly that "Rule 5.39(x) cannot be applied against Luman" (App. 9a). Petition for rehearing was denied.

Reason for Granting the Writ

The writ should be granted because the decision of the Court of Appeals (App. 9a), that a public employee "cannot be discharged for refusing to testify" administratively respecting his official conduct, decides a question of federal constitutional law in a way in conflict with applicable decisions of this Court.

The Court of Appeals reversed because, it said, *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation* (1968), 392 U.S. 280, holds that an employee fearing self-incrimination "cannot be discharged for refusing to testity" in an administrative hearing (App. 9a). The cited decision of this Court does not so hold. It holds rather that an employee cannot be discharged for refusing to waive the statutory immunity that will result from his testimony. The decision sought to be reviewed not only departs from and conflicts with this Court's decision in *Uniformed Sanitation Men* but is also in direct conflict with this Court's decision in *Gardner* v. *Broderick* (1968), 392 U.S. 273:

> "If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, Garrity v. State of New Jersey, supra, the privilege against self-incrimination would not have been a bar to his dismissal."
>
> 392 U.S. at 278.

In *Uniformed Sanitation Men* three city employees were discharged for refusing to sign waivers of immunity when summoned before a grand jury, and twelve additional em-

ployees were discharged for refusal to answer questions by the Commissioner of Investigation of the City of New York when told that their answers could be used against them in subsequent proceedings. Holding that their discharge was improper, this Court stated:

> "Petitioners were not discharged merely for refusal to account for their conduct as employees of the city. They were dismissed for invoking and refusing to waive their constitutional right against self-incrimination.
>
> . . .
>
> "As we stated in Gardner v. Broderick, supra, if New York had demanded that petitioners answer questions specifically, directly, and narrowly relating to the performance of their official duties on pain of dismissal from public employment without requiring relinquishment of the benefits of the constitutional privilege, and if they had refused to do so, this case would be entirely different. In such a case, the employee's right to immunity as a result of his compelled testimony would not be at stake . . . petitioners, being public employees, subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights."
>
> 392 U.S. at 283-85.

Similarly, in *Gardner* this Court held that a police officer was improperly "discharged from office not for failure to

answer relevant questions about his official duties, but for refusal to waive a constitutional right." 392 U.S. at 278.

Thus, the holding of the Court of Appeals, that by their construction of *Uniformed Sanitation Men* "Luman is forearmed with the fact that he cannot be discharged for refusing to testify," is in direct conflict with both that decision and the decision in *Gardner*.

The decision of the Court of Appeals deprives local government of essential powers which heretofore were thought to be constitutional in their exercise. For reasons best known to them, respondents do not complain of the decision. But the decision of the Court of Appeeals also has serious consequences for Luman. For while it seemingly alleviates the coercion that will attend the threatened hearing by freeing Luman from testifying, the decision in fact renders voluntary,* and hence admissible in the criminal trial, any testimony that Luman may feel bound to give to protect his job. Thus, far from relieving Luman's perplexity, as apparently was its intention, the Court of Appeals has compounded it.

The importance of this case as precedent is that the moment of coercion has not yet come. Ordinarily, federal courts have only to decide whether there was coercion at some past moment and then to determine what remedy is required to obliterate the consequences of that coercion. Powerless to recall and undo coercion once applied, the usual judicial function is to deprive the State of the fruits of coercion. Certainly, in the structure of the federal judiciary, that has been this Court's function. *See, e.g., Garrity* v. *New Jersey* (1967), 385 U.S. 493; *Miranda* v. *Arizona* (1966), 384

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*Garrity v. New Jersey (1967), 385 U.S. 493, 499.

U.S. 436; *Blackburn* v. *Alabama* (1960), 361 U.S. 199; *Chambers* v. *Florida* (1940), 309 U.S. 227. This concentration on reparations as remedy is almost inevitable, but its result is frequently that "[t]he criminal is to go free because the constable has blundered." *People* v. *Defore* (1926), 242 N.Y. 13, 21, 150 N.E. 585, 587 (Cardozo, J.).

District Judge McRae recognized, though the Court of Appeals evidently did not, that the Constitution first forbids the coercion before it forbids the use of its fruits. In *Garrity* v. *New Jersey* (1967), 385 U.S. 493, this Court held that testimony gained from police officers on "the fear of being discharged . . . for refusal to answer on the one hand and the fear of self-incrimination on the other was 'a choice between the rock and the whirlpool' which made the statements products of coercion in violation of the Fourteenth Amendment." 385 U.S. at 496. The Court held that the Constitution prohibited the coercion which produced the statements, and therefore reversed convictions obtained by the use of the statements:

> "The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in Miranda v. State of Arizona, 384 U.S. 436, 464-465, 86 S.Ct. 1602, 1623, 16 L.Ed.2d 694, is 'likely to exert such pressure upon an individual as to disable him from making a free and rational choice.'"
>
> 385 U.S. at 497.

There is no doubt but that, as the District Court found (App. 2a), the threatened hearing would coerce Luman in

the exercise of his constitutional rights respecting self-incrimination. The Court of Appeals undertook to alleviate that coercion, by assuring Luman that he may with impunity withhold his testimony. That advice resulted in an erroneous decision conflicting with all that this Court has recently said on the subject. And so, coercion is still threatened.

This Court has variously accommodated, depending on circumstances, the "undeniable tension" [*Simmons* v. *United States* (1968), 390 U.S. 377, 394] between individual needs for freedom from coercion in the enjoyment of constitutional immunities and society's need to protect "other important public values" [Mr. Justice Harlan for the dissenters in *Garrity*, 385 U.S. 493, 501.] The District Court found in this case that there is no "important public value" to be served by the threatened administrative hearing, in advance of disposition of the criminal charges (App. 2a).

The District Court's finding was surely correct. An immediate hearing is not necessary to separate Luman from his duties as a policeman, from his uniform, from the payroll and from other benefits that Luman enjoyed as an officer. Luman has already been removed from the force and he remains a public officer only in the sense that his removal is not yet final and he may yet be restored, if he is acquitted of the State criminal charges and if, on a proper administrative hearing, he is likewise acquitted. But a hearing now cannot result in his restoration. (See respondents' Answer, R. 36).

Thus, as the District Court held (App. 2a), no public interest would be served by an immediate hearing. The Court of Appeals stated in its opinion that:

> "Defendants, on the other hand, urge that the matter of Luman's suspension should be settled one way or the other in the public interest of keeping the police force at full strength. Until the question is settled, they argue, they are not at liberty to replace Luman although he has been removed from the force."
>
> App. 6a.

As the Court of Appeals indicated, this was pure "argument." Even as argument, it was never advanced in the District Court. There is, therefore, no evidence that the City is "not at liberty to replace Luman" or that "replacing" him is a critical step in "keeping the police force at full strength." More fundamentally, however, it is evident that an immediate hearing cannot "settle" the matter "one way or the other" but only "one way," by sustaining his removal.

In these circumstances, as the District Court held, the restoration hearing "presumably for the benefit of the accused" (App. 2a) cannot serve its purpose and will result only in imposing on Luman an "impermissible" choice.

Conclusion

The writ should be granted to review a decision of a Court of Appeals which is demonstrably in conflict with this Court's prior decisions and to reaffirm that, in the absence of real public values to be served by such action, the Constitution forbids that the City coerce an employee in the free exercise of his constitutionally-secured rights.

Respectfully submitted,

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APPENDIX



APPENDIX

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

PERMANENT INJUNCTION

(June 14, 1968)

After due notice, this cause came on for hearing before this Court on June 13, 1968.

As the result of the stipulation entered into between the parties, there are no factual issues to be tried. Plaintiff's application is for a preliminary or permanent injunction pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. This Court has jurisdiction of the parties and of the claim for relief. 42 U.S.C. § 1983, 28 U.S.C. §1343.

It is apparent from the stipulated facts that defendants, officials of the City of Jacksonville, and in their respective capacities as members of the Police Disciplinary Hearing Board, acting under color of State law, will, unless restrained, hold an immediate public hearing to inquire into and make findings with respect to the charges of criminal and other misconduct made against plaintiff by the Chief of Police of the City of Jacksonville as grounds for plaintiff's suspension or removal from the force on December 8, 1967.

It is clear that such a hearing would deprive plaintiff of certain rights secured to him by the fourteenth amendment of the United States Constitution.

If plaintiff were to appear before the Board, any testimony he might give could be used against him in the State criminal case now pending, either as evidence or as a means of

obtaining evidence. If plaintiff should fail to appear, or refuse to testify, he could be dismissed pursuant to Rule 5.39(x) of the Jacksonville Police Department. Such a choice is impermissible under the Constitution of the United States. See *Garrity v. New Jersey*, 385 U.S. 493 (1967), *Spevack v. Klein*, 385 U.S. 511 (1967), *Uniformed Sanitation Men Ass'n., Inc., v. Comm'r. of Sanitation of City of New York*, 36 U.S.L. Week 4534 (U.S. June 10, 1968), *Gardner v. Broderick*, 36 U.S.L. Week 4536 (U.S. June 10, 1968). In any event, the Board, at a hearing presumably for the benefit of the accused, cannot reinstate plaintiff so long as the criminal charges are pending. This Court cannot envision any public interest that would be served by having a hearing prior to the disposition of those charges.

Therefore, it is

ORDERED:

1. Defendants are hereby permanently restrained and enjoined from hearing and determining the matter of the pending charges made against plaintiff, James F. Luman, by the Chief of Police of the City of Jacksonville until the criminal charges now pending against plaintiff in the Criminal Court of Record of Duval County are disposed of.

2. Plaintiff is released from the bond filed to effectuate the Temporary Restraining Order heretofore entered, and the Clerk is directed to return to plaintiff or to his attorneys the cash deposit made in lieu of surety bond.

DONE AND ORDERED at Jacksonville, Florida, this 14th day of June, 1968.

/s/ Wm. A. McRae, Jr.

Judge

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(Rendered April 22, 1969)
Before PHILLIPS*, BELL, and
MORGAN, Circuit Judges.

BELL, Circuit Judge: Defendants-appellants are members of the Police Disciplinary Hearing Board of the City of Jacksonville, Florida. Luman is a Jacksonville policeman who was suspended from the force by the Chief of Police for conduct allegedly "prejudicial to the efficiency, good name and reputation of the Jacksonville Police Department." Thereafter state criminal charges were filed against him. Defendants then proposed to hold an administrative hearing on the charges of the Chief of Police. Luman sought to have the hearing continued in view of the pendency of the state charges which admittedly arose out of the same activity that gave rise to his suspension by the Chief of Police. The continuance was denied.

Luman then sought a federal injunction, on a privilege against self-incrimination Fifth Amendment basis, to restrain the holding of such a hearing until after disposition of the state criminal charges. The district court granted a permanent injunction and this appeal followed.

In issuing the injunction, the district court said:

> "If plaintiff were to appear before the Board, any testimony he might give could be used against him in the State criminal case now pending, either as evidence or as a means of obtaining evidence. If plaintiff should fail to appear, or refuse to testify, he could

*Of the Tenth Circuit, sitting by designation.

> be dismissed pursuant to Rule 5.39(x) of the Jacksonville Police Department. Such a choice is impermissible under the Constitution of the United States. See *Garrity v. New Jersey*, 385 U.S. 493 (1967), *Spevack v. Klein*, 385 U.S. 511 (1967), *Uniformed Sanitation Men Ass'n, Inc. v. Comm'r of Sanitation of City of New York*, 36 U.S.L. Week 4534 (U.S. June 10, 1968), *Gardner v. Broderick*, 36 U.S.L. Week 4536 (U.S. June 10, 1968). In any event, the Board, at a hearing presumably for the benefit of the accused, cannot reinstate plaintiff so long as the criminal charges are pending. This Court cannot envision any public interest that would be served by having a hearing prior to the disposition of those charges."

The court thus saw Rule 5.39(x) as placing Luman in a constitutionally impermissible dilemma such as to require an injunction. The court also gave weight to the lack of public interest in having a hearing. We are constrained to the view that the injunction was not due.

The Rule and Regulations governing the Jacksonville Police Department define "conduct prejudicial to the efficiency, good name and reputation of the department" to include the following:

> 5.39(m) - Commission of a Criminal Act in violation of a State or Federal Statute.
>
> . . . . .
>
> 5.39(x) - Wilful refusal or failure to appear before any Court, judge, prosecuting officer, board or body authorized to conduct any hearing or inquiry in any investigation for a violation of any of the statutes of this state when requested to do so; or, having appeared, refusal to

> testify or answer any question concerning his conduct as a police officer or the performance of his duties on the grounds that his testimony or answers would tend to incriminate him; or refusal to waive immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry.

The sequence of pertinent events are as follow. Luman was suspended from the police force on December 8, 1967. He timely requested a hearing before the Police Disciplinary Board. On December 29, 1967 and February 9, 1968, after Luman had requested a hearing, the Chief of Police filed two sets of written charges against him. On March 7, 1968, the State of Florida filed a nine count criminal information against him. The criminal charges involved allegations of larceny, burglary, and conspiracy. As stated, it is agreed that the criminal charges arise out of the same activities as gave rise to Luman's removal from the police force. After the state criminal charges were filed, defendants notified Luman to appear for a hearing. It was then that he sought a continuance of the hearing until disposition of the criminal charges by the state.

It is undisputed that the administrative hearing will be of no avail to Luman until there has been a disposition of the state charges. This follows from the answer of defendants that: "Plaintiff cannot possibly be restored to duty and reinstated as a member of the Jacksonville Police Department, as a result of a hearing to be held June 5, 1968 [the proposed hearing date], or at any other time before the trial and disposition of the criminal charges pending against him." This fact is the basis for Luman's point, in addition to his privilege against self-incrimination argument, that no useful purpose

could be served by a hearing and that the public interest would not suffer from a continuance. Defendants, on the other hand, urge that the matter of Luman's suspension should be settled one way or the other in the public interest of keeping the police force at full strength. Until the question is settled, they argue, they are not at liberty to replace Luman although he has been removed from the force.

Luman's position is that defendants seek to put him on terms with respect to his Fifth Amendment privilege against self-incrimination.[1] He urges that they offer him only the choices of risking the forfeiture of his job for failure to comply with Rule 5.39(x), or the possibility of self-incrimination if he does comply.

As we read the Supreme Court opinions in this area, *Garrity v. New Jersey*, 1967, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562; *Gardner v. Broderick*, 1968, ... U.S. ....., 88 S.Ct. ....., 20 L.Ed.2d 1082; and *Uniformed Sanitation Men v. Comm. of Sanitation*, 1968, ... U.S. ....., 88 S.Ct. ....., 20 L.Ed.2d 1089, the choices faced by Luman do not run afoul of his asserted constitutional right. The first phase of the problem was answered in the context of testimony coerced by a rule similar to Rule 5.39(x) at an administrative hearing, with the testimony given being used later against the employee in a criminal trial. This was the situation in *Garrity v. New Jersey* where the Supreme Court said:

> "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal

[1]Applicable against appellant city officials under the Fourteenth Amendment since *Malloy v. Hogan*, 1964, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653.

> from office, and that it extends to all, whether they are policemen or other members of our body politic." 385 U.S. at p. 500.

The issue in *Garrity* was the scope of the privilege against self-incrimination. The court approached the problem by posing the question ". . . whether the accused was deprived of his free choice to admit, to deny, or to refuse to answer." 380 U.S. at p. 496. Concluding that he was depriced of his free choice by the impact of the forfeiture of employment rule, the statements were held inadmissible in the subsequent criminal proceedings.

This, however, left unanswered the other side of the question: whether a rule such as Rule 5.39(x) could be validly used in the first place to provide such coercion. The answer, in the negative, came in the *Gardner*, and *Uniformed Sanitation Men* cases, supra.

In Gardner, the court said: ". . . the mandate of the great privilege against self-incrimination does not tolerate the attempt, regardless of its ultimate effectiveness, to coerce a waiver of the immunity it confers on penalty of the loss of employment." *Gardner* involved a grand jury investigation of criminal activities involving policemen, rather than an administrative hearing. Also, the state had an immunity statute which conferred immunity on Gardner, which he was asked to waive on threat of discharge. The *Gardner* court, however, spoke to the situation of the administrative hearing:

> "If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a crimi-

nal prosecution of himself, *Garrity v. New Jersey*, supra, the privilege against self-incrimination would not have been a bar to his dismissal."

In the *Uniformed Sanitation Men* case, the court held that the city sanitation employees could not be put to the choice under a rule quite like Rule 5.39(x),[2] between surrendering their constitutional rights or their jobs. Fifteen men were involved. Three were asked to sign waivers of immunity before the grand jury and were thus in the same category as the policeman in *Gardner*. Twelve were discharged for refusing to testify at a city administrative hearing, asserting their privilege against self-incrimination. The court concluded that they were wrongfully dismissed.

The question for this court then is how stands Luman in light of these authorities? There is no contention that defendants could grant him immunity from state prosecution. Cf. the Florida statute on immunity as it relates to courts, FSA, § 939.29. Thus we do not have a precise *Gardner* case. We do, however, have a *Uniformed Sanitation Men* case, and under its rationale, Luman is forearmed with the fact that

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[2]Section 1123 of the New York City Charter provides:

"If any councilman or employee of the city shall, after lawful notice or process, wilfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the city or of any county included within its territorial limits, or regarding the nomination, election, appointment or official conduct of any officer or employee of the city or of any such county, or the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify upon any such hearing or inquiry, his term or tenure of office or employment shall be vacant, and he shall not be eligible to election or appointment to any office or employment under the city or any agency."

he cannot be discharged for refusing to testify. He no longer faces the choice of self-incrimination or job forfeiture under Rule 5.39(x).

In sum, the present posture of the law, as we understand it, leaves the parties in this position. Rule 5.39(x) cannot be applied against Luman. At the administrative hearing he will have a "free choice to admit, to deny, or to refuse to answer."[3] This is full vindication of the Fifth Amendment privilege against self-incrimination. On the other hand, defendants may conduct a hearing within the confines of the charges against Luman which relate to the performance of his official duties.

Lastly, we must consider Luman's position that we need not try to unravel the decisional threads of the *Garrity*, *Gardner*, and *Uniformed Sanitation Men* cases. He argues that because the City of Jacksonville has not shown that important public values would be frustrated by the injunction, the injunction should be continued and the district court affirmed. This, however, misconceives the burden of justification in this area and ignores important institutional interests inherent in the federal system. The injunction must be grounded on a violation of federal constitutional or statutory rights. Here there are no such grounds.

REVERSED and REMANDED with direction that the injunction be dissolved.

---

[3]In the absence of an immunity statute, we are not faced with the question of the right of a city to discharge an employee who refuses to answer. Cf. *Gardner v. Broderick*, ------ U.S. at p. -------. [36 L.W. at 4537].

OPINION OF COURT OF APPEALS UPON DENYING REHEARING

(May 28, 1969)

ON PETITION FOR REHEARING

Before PHILLIPS*, BELL, and MORGAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED. It is further ordered that costs of appeal shall be borne by each party as incurred.

*Judge Phillips of the Tenth Circuit, sitting by designation.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO. 517

JAMES F. LUMAN,

Petitioner,

Vs.

HANS G. TANZLER, JR., ET AL., as and constituting the members of the Police Disciplinary Hearing Board of the City of Jacksonville, a municipal corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIAM LEE ALLEN
Counsel of Record

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Counsel
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For Respondents

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MISCELLANEOUS:

Rules and Regulations of the Jacksonville Police Department — Rules 5.39(m), 5.39(x), 5.49 ..... 4, 6, 7, 8, 9, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO. 517

JAMES F. LUMAN,

Petitioner,

Vs.

HANS G. TANZLER, JR., ET AL.,
as and constituting the members
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Board of the City of Jacksonville,
a municipal corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HANS G. TANZLER, JR., et al., respondents, oppose the issuance of a Writ of Certiorari to the judgment of the United States Court of Appeals for the Fifth Circuit, as prayed for in the petition, and submit herewith their brief in opposition.

QUESTION PRESENTED

Respondents do not agree that the record in this case will support the question presented for review as given by petitioner, but believe the record more accurately supports the following question:

> Whether a police officer removed from the force for violation of police regulations, and for the commission of acts which constitute felonies, who appeals his removal to a police review board requesting a public hearing, resulting in the chief of police filing written charges in support of the removal, is denied any fourteenth amendment right by the refusal of the review board to continue the hearing until disposition of criminal charges against the officer, based on the same acts which formed the basis for his removal from the police force, where such charges were brought after his removal, request for hearing and filing of administrative charges.

CONSTITUTIONAL PROVISIONS. STATE STATUTES AND MUNICIPAL REGULATIONS INVOLVED

Respondents do not agree that any federally protected right is involved herein.

The laws of Florida applicable to the Jacksonville Police Department provide in part:

> "The chief of police shall be the chief executive officer of the police department and have the following powers and duties:
>
> . . .
>
> "(k) To suspend without pay and file written

charges with the police review board against any member of the police force who has served more than one year for the removal of the party so charged as a member of the police force."

Chap. 65-1747, §4, Laws of Florida

"No member of the police force, except the chief of police, who has served more than one year shall be removed from the police force without cause. Within ten days after receiving written notice from the chief of police of such removal, any member of the police force so removed, who has served more than one year, may request a public administrative hearing before a police review board hereby established to be known as the 'police disciplinary hearing board', composed of the members of the city commission, the president of the city council and the municipal judge, with the mayor-commissioner or, in his absence, the municipal judge presiding. If no such request is received in writing by the secretary of the city commission, who shall be the recorder for said board, within the time allowed herein, such right of hearing shall be deemed waived and the removal shall be final. Upon receipt of notice of such request for hearing the chief of police, with reasonable dispatch, shall prefer written charges with the police disciplinary hearing board stating the reasons for such removal and the secretary of the city commission shall promptly give such person so removed due notice of the charges and of the time and place of the hearing. On the hearing of a person so removed from the police force, the police disciplinary hearing board may sustain such removal, or may reinstate such person as a member of the police force, with or without pay, demotion in

rank, or suspension without pay, as it may deem just and proper."

Chap. 65-1747, §5, Laws of Florida

The Rules and Regulations for the organization and government of the Jacksonville Police Department, which have been adopted by the Chief of Police and approved by resolution of the City Commission of the City of Jacksonville, define "conduct prejudicial to the efficiency, good name and reputation of the department" to include, among other conduct, the following:

"5.39

. . .

"(m) Commission of a criminal act in violation of a State or Federal Statute."

The Rules and Regulations further provide, in Rule 5.49:

"The Chief of Police may suspend any member of the Department without pay against which a criminal information or indictment has been filed until disposition shall be made of such criminal charges, reporting such suspension forthwith to the Police Disciplinary Hearing Board for approval or disapproval. In case the Police Disciplinary Hearing Board shall approve such suspension, the member suspended shall be on enforced leave of absence without pay until disposition is made of the criminal charges against him, and he shall not be entitled to pay for such period of suspension regardless of the outcome of the criminal charges against him. The conviction of said member of such criminal charges shall be cause for his removal as a member of the Department without pay from the time of his suspension."

STATEMENT OF THE CASE

The statement of the case made by petitioner is inaccurate and can best be stated thusly:

On December 8, 1967, the Chief of Police of Jacksonville, Florida, removed petitioner from the Jacksonville police force for conduct prejudicial to the efficiency, good name and reputation of the Jacksonville Police Department (R-43). The law regulating the Jacksonville Police Department, Chapter 65-1747, Laws of Florida, provides that any police officer so removed may request a public administrative hearing before a police review board within ten days after removal. If this is not done, the removal is final. Upon receipt of a request for hearing, the police chief must then prefer written charges before the board stating the reasons for the removal (R-5).

Petitioner requested a hearing and the chief of police on December 29, 1967, filed six written charges of misconduct by petitioner, including four charges of the commission of criminal acts in violation of State statutes (R-8, 15).

Thereafter on February 9, 1968, the chief of police filed four additional written charges of misconduct by petitioner, all of which were charges of the commission of criminal acts in violation of state statutes (R-8, 16).

On March 7, 1968, the State of Florida filed a nine count criminal information against petitioner and others. The transactions that are the subject of eight of the counts in the criminal information are the genesis of the charges made against petitioner by the chief of police (R-18).

Respondents scheduled hearing on the charges was twice continued at the request of petitioner. The motion of peti-

tioner for a third continuance was denied (R-10). Thereupon, petitioner filed his complaint for an injunction (R-3-27) on the ground that Rule 5.39(x) of the Jacksonville Police Department (R-7) would compel him to testify against himself or be subject to removal from the Department (R-13). Respondents' answer incorporated two Rule 12 defenses; failure to state a claim and lack of jurisdiction over the subject matter (R-36).

The District Court entered an order temporarily restraining the hearing (R-29), and thereafter entered the permanent injunction (R-68).

On appeal the Fifth Circuit Court of Appeals reversed and remanded the District Court with directions that the injunction be dissolved (R 76-86). A Petition for rehearing (R 87-103) was denied (R-104).

ARGUMENT

Petitioner seeks to bring himself within the ambit of Supreme Court Rule 19(b), on the premise that the Fifth Circuit Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court, to-wit: *Gardner v. Broderick*, 392 U.S. 273 (1968) and *Uniformed Sanitation Men Association, Inc. v Commissioner of Sanitation*, 392 U.S. 280 (1968). His vehicle with which he seeks to accomplish this maneuver is Rule 5.39(x)[1] of the Rules and Regulations of the Jacksonville Police Department,

---

[1]This rule is not listed by respondents under the heading herein "Constitutional provisions, state statutes and municipal regulations involved" since they feel, as does the Fifth Circuit Court of Appeals, that the rule has not yet come into play.

providing that conduct prejudicial to the efficiency, good name and reputation of the department shall include, among other conduct, the following:

> "Wilful refusal or failure to appear before any Court, judge, prosecuting officer, board or body authorized to conduct any hearing or inquiry in any investigation for a violation of any of the statutes of this state when requested to do so; or, having appeared, refusal to testify or answer any question concerning his conduct as a police officer or the performance of his duties on the grounds that his testimony or answers would tend to incriminate him; or refusal to waive immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry."

This appears clear from the allegations of paragraph 8(b) of the Complaint that:

> " . . . the conduct of such a hearing would, under the circumstances, require plaintiff to hazard a guess as to the validity of Rule 5.38(x) (sic) and to testify or not testify before the Board with respect to his conduct as a police officer in the risk, if he does testify, that such evidence as he gives will be used by the State as evidence against him in the criminal proceeding or will be used by the State as information leading to the development of evidence to be used against him in the criminal proceeding and in the risk, if he does not testify, that his failure will constitute conduct prejudicial to the efficiency, good name and reputation of the Department and will constitute grounds for his removal from the Police Department, irrespective of his innocence of the charges against him."

Rule 5.39(x) has no relevance to this controversy. There are no allegations that petitioner was removed from the force on this ground, and the charges attached as exhibit A to the complaint (R-15), and exhibits A and B (R-43, 46) (A 1-6) of the affidavit of J. Mims Ingram (R-41), reflect that this was not the case. The case of *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), cited by petitioner and the district court, as authority for enjoining the administrative hearing, would actually, if petitioner's contention is correct, prohibit the use at any subsequent criminal trial of any compulsory testimony given at the administrative hearing. The court stated:

> "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic."
>
> 385 U .S. at 500

The basis for the ruling of the lower court was given as follows:

> "If plaintiff were to appear before the Board, any testimony he might given could be used against him in the State criminal case now pending, either as evidence or as a means of obtaining evidence. If plaintiff should fail to appear, or refuse to testify, he could be dismissed pursuant to Rule 5.39(x) of the Jacksonville Police Department. Such a choice is impermissible under the Constitution of the United States. See *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), *Spevack* v. *Klein*, 385 U.S. 511 (1967), *Uniformed Sanitation Men Ass'n., Inc.* v. *Comm'r of Sanitation of City of New York*, 36 U.S.L. Week 4534 (U.S. June 10, 1968),

Gardner v. *Broderick*, 36 U.S.L. Week 4536 (U.S. June 10, 1968)." (R-69).

This conclusion of the court was not supported by the record. Petitioner is not faced with the choice of testifying against himself or losing his job. HE HAS NO JOB TO LOSE. This appears clearly from the law regulating the police department (R-5), the letters of the chief of police preferring charges (R-43, 46), and as succinctly stated by petitioner:

> "Here, no need to separate a defaulting employee from his duties and from the public payroll. James F. Luman was effectively removed *months ago* from the police force, from his duties, from his uniform and from the payroll. He has been removed and the only question which by statute the Police Disciplinary Hearing Board is empowered to decide is *whether he shall be reinstated or his removal sustained.* Until he is reinstated, he remains 'removed'."
>
> "The statutory purpose of the hearing procedure is plainly to benefit the removed policeman. That procedure does not come into operation *at all* unless the removed policeman requests it, as was done in this case." (A-66). (Emphasis plaintiff's).

The choice faced by petitioner, when the criminal charges were filed against him, was whether to withdraw his request for an administrative hearing challenging his removel, or risk having the hearing held prior to the criminal trial. Any risk would be limited to the effect his failure to testify in his own behalf would have on the decision of the members of the hearing board.

The bugaboo of Rule 5.39(x) raised by petitioner just does not exist. It is doubtful that *any* court would permit the

rule to be applied retroactively against a person who was not a member of the department at the time the violation of the rule would supposedly have occurred (R-66). Assuming, without conceding, that it does, however, in order for it to be used as a vehicle to remove petitioner, the following would have to occur:

1. Petitioner's refusal to testify at the disciplinary hearing.
2. The police hearing board refused to uphold his removal from the force.
3. Acquittal of all criminal charges.
4. Reinstatement.
5. Removal for having failed to testify.

The happening of the foregoing sequence of events is too remote and speculative to be seriously considered.

Additionally, and perhaps more compellingly, it is obvious that the general charges of conduct prejudicial to the efficiency, good name and reputation of the Police Department; wilful neglect to perform his duties in the manner required by departmental rules and regulations; rules of duty or rules of procedure; wilful departure from the truth in connection with his official duties; and commission of a criminal act in violation of a state or federal statute, involving the performance of his official duties. Specific charges one through ten, with the exception of charge No. 9, all involve acts committed while investigating crimes in the course of his official duties (R-43-49).

Petitioner says Rule 5.39(x) could result in his removal if he refused to testify before the hearing board. If his present status was that he was merely suspended, or was appearing

before the board for a determination as to whether he should be suspended or fired, and he refused to appear or testify, it could and should. As Justice Fortas stated in *Spevack* v. *Klein*, 385 U.S. 511 (1967),

> ". . . a public employee (may be) asked questions specifically, directly, and narrowly relating to the performance of his official duties as distinguished from his beliefs or other matters that are not within the scope of the specific duties which he undertook faithfully to perform as part of his employment by the State. This court has never held, for example, that a policeman may not be discharged for refusal in disciplinary proceedings to testify as to his conduct as a police officer."
>
> 385 U. S. at 519

To the same effect is his language in *Gardner* v. *Broderick*, 392 U.S. 372 (1968),

> "If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, Garrity v. New Jersey, supra, the privilege against self-incrimination would not have been a bar to his dismissal."
>
> 392 U.S. at 278

In *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), the question presented to the court was whether the state could use the threat of discharge to secure incriminatory evidence against the officer, as it is unconstitutional to impose the choice of self-incrimination or job forfeiture.

The New Jersey statute involved is quite similar to Rule 5.39(x).

Petitioner has made no showing that he is required to waive any constitutional right in connection with either his request for a hearing, or in any appearance before the board.

What petitioner is really saying, is that there is a constitutional right to the continuance of an administrative hearing, or civil trial, until the disposition of any criminal charges based on the same acts. Assume an intoxicated driver of an automobile who fatally injuries a pedestrian. A civil suit and manslaughter charges follow in due course. Does the driver of the auto have a constitutional right to the continuance of the civil trial until disposition of the manslaughter charge? There appear to be no cases saying yes. An annotation at 123 ALR 1453, entitled "Pendency of criminal prosecution as ground for continuance or postponement of civil action involving facts or transactions upon which prosecution is predicated", states the general rule in the negative, as follows:

> "It is generally held that the courts are not compelled to continue or postpone a civil action because of the pendency of a criminal prosecution involving the same facts upon which the prosecution is predicated. The matter is usually addressed to the discretion of the court, and its rulings will not be disturbed unless manifestly erroneous."

This rule is obviously based upon sound principles.

Here, petitioner may never be brought to trial. After all, the nine count information was filed against him on March 8, 1968, and he has not yet been tried. While he is awaiting trial, and with no disposition of the administrative charges, his position remains unfilled.

CONCLUSION

The Petition for Certiorari should not be granted.

Respectfully submitted,

WILLIAM LEE ALLEN
Counsel of Record

CLAUDE L. MULLIS, SR.
Counsel for Respondents

1300 City Hall
Jacksonville, Florida 32202

EXHIBIT "A".

City of Jacksonville
Department of Police
711 Liberty Street
P. O. Box 2070
Jacksonville, Florida 32203

December 29, 1967

Honorable Hans G. Tanzler, Jr.,
Mayor-Commissioner, and Members of
the Police Disciplinary Hearing Board
City Hall
Jacksonville, Florida
Re: Patrolman J. F. Luman, 4355 San Juan Avenue,
Jacksonville, Florida.

Gentlemen:

Pursuant to Chapter 65-1747, Laws of Florida, on December 8, 1967, I gave Patrolman J. F. Luman written notice of his removal from the Jacksonville Police Force, effective December 8, 1967, for conduct prejudicial to the efficiency, good name and reputation of the Jacksonville Police Department.

Under date of December 8, 1967, I received a copy of a letter directed to J. M. Ingram, Secretary City Commission and Ex-Officio Recorder of your Honorable Body, written by attorney R. Hudson Olliff on behalf of Patrolman J. F. Luman, requesting a public hearing before your Honorable Body. Mr. Ingram, as recorder of the Police Disciplinary Hearing Board, gave me written notice that I should, with reasonable dispatch, prefer written charges against Patrolman Luman stating the reasons for such removal.

I now charge Patrolman Luman with conduct prejudicial to the efficiency, good name and reputation of the Police Department; wilful neglect to perform his duties in the manner required by departmental rules and regulations, rules of duty or rules of procedure; wilful departure from the truth in connection with his official duties; and commission of a criminal act in violation of a State or Federal Statute, to-wit:

Charge No. 1.

I charge that on or about May 19, 1967, at National Food of Florida, 2037 Edison Avenue, Jacksonville, Florida, at approximately 4:10 A. M., Officer J. F. Luman, in conjunction with Sergeant J. E. Barnhart, while investigating a breaking and entering thereat, took and converted to his own use therefrom frozen meats.

Charge No. 2.

I charge that on or about May 30, 1967, at or near McCoys Boulevard and Margaret Streets, Jacksonville, Florida, while investigating a safe which had been stolen by parties unknown from Central Tire Company, 341 West Duval Street, Jacksonville, Florida, Officer J. F. Luman, in conjunction with Sergeant J. E. Barnhart, removed therefrom the sum of $187.00 and converted same to his own use.

Charge No. 3.

I charge that on or about November 29, 1967, at Otto's of Vienna, 3611 St. John's Avenue, Jacksonville, Florida, at approximately 2:30 A. M., Officer J. F. Luman, while investigating a reported breaking and entering, in conjunction with Sergeant J. E. Barnhart, broke and entered the owner's locked inner office.

Charge No. 4.

I charge that on or about November 29, 1967, at Otto's of Vienna, 3611 St. John's Avenue, Jacksonville, Florida, at approximately 2:30 A. M., Officer J. F. Luman, while investigating a reported breaking and entering, in conjunction with Sergeant J. E. Barnhart, broke and entered the owner's locked inner office and removed $250.00 from an unlocked safe, and converted same to his own use.

Charge No. 5.

I charge that on or about November 29, 1967, at Otto's of Vienna, 3611 St. John's Avenue, Jacksonville, Florida, at approximately 2:30 A. M., Officer J. F. Luman, while investigating a reported breaking and entering thereat, entered the premises for a period of 4 or 5 minutes, but subsequently reported that he had only entered the premises momentarily.

Charge No. 6.

I charge that on or about November 20, 1967, at the Helmsman Shop, 3551 St. John's Avenue, Jacksonville, Florida, at approximately 1:30 A. M., Patrolman J. F. Luman, while investigating a reported breaking and entering thereat, was the first officer on the scene and entered the building without being directed to do so by the Sector Supervisor.

I request that Patrolman J. F. Luman be given a public administrative hearing before your Honorable Body pursuant to the provisions of Section 5, Chapter 65-1747, Laws of Florida.

Very truly yours,
R. C. BLANTON, JR.,
(R. C. Blanton, Jr.),
Chief of Police.

RCBjr:mn

EXHIBIT "B".

City of Jacksonville
Department of Police
711 Liberty Street
P. O. Box 2070
Jacksonville, Florida 32203

February 9, 1968

Honorable Hans G. Tanzler, Jr.,
Mayor-Commissioner, and Members of
The Police Disciplinary Hearing Board
City Hall
Jacksonville, Florida

Re: Patrolman J. F. Luman, 4355 San Juan Avenue,
Jacksonville, Florida.

Gentlemen:

Pursuant to Chapter 65-1747, Laws of Florida, on December 8, 1967, I gave Patrolman J. F. Luman written notice of his removal from the Jacksonville Police Force, effective December 8, 1967, for conduct prejudicial to the efficiency, good name and reputation of the Jacksonville Police Department.

Under date of December 8, 1967, I received a copy of a letter directed to J. M. Ingram, Secretary City Commission and Ex-Officio Recorder of your Honorable Body, written by attorney R. Hudson Olliff on behalf of Patrolman J. F. Luman, requesting a public hearing before Your Honorable Body. Mr. Ingram, as recorder of the Police Disciplinary Hearing Board, gave me written notice that I should,

with reasonable dispatch, prefer written charges against Patrolman Luman stating the reasons for such removal.

On December 29, 1967, I preferred six charges against Patrolman Luman, and on January 16, 1968, Your Honorable Body set the time for hearing said charges at 9:30 a. m. March 6, 1968.

I now prefer additional charges against Patrolman Luman, charging him with conduct prejudicial to the efficiency, good name and reputation of the Police Department; wilful neglect to perform his duties in the manner required by departmental rules and regulations, rules of duty or rules of procedure; wilful departure from the truth in connection with his official duties; and commission of a criminal act in violation of a State or Federal Statute, to-wit:

Charge No. 7.

I charge that on or about May 30, 1967, at or near Gartners Tool Company, 2000 Edison Avenue, Jacksonville, Florida, at approximately 11:35 p.m., Patrolman J. F. Luman, while assisting in the investigation of a breaking and entering thereat, observed Sergeant J. E. Barnhart converting to his own use tools and equipment therefrom and failed to report same.

Charge No. 8.

I charge that on or about February 26, 1967, at Americana Insurance Groups, 2255 Phyllis Street, Jacksonville, Florida, Paturolman J. F. Luman, while investigating a breaking and entering thereat, broke and entered a locked inner office, removed a cash box from a locked filing cabinet and converted moneys therefrom to his own use.

Charge No. 9.

I charge that during the month of April, 1967, Patrolman J. F. Luman entered an unlocked door at Leeds Shoe Store, Roosevelt Mall, Jacksonville, Florida, and took and converted to his own use several pairs of shoes therefrom.

Charge No. 10.

I charge that on or about November 20, 1967, at the Helmsman Shop, 3551 St. John's Avenue, Jacksonville, Florida, at approximately 1:30 a.m., Patrolman J. F. Luman, while investigating a reported breaking and entering thereat, took and converted moneys therefrom to his own use.

I request that Patrolman J. F. Luman be given a public administrative hearing before Your Honorable Body, pursuant to the provisions of Section 5, Chapter 65-1747, Laws of Florida, at the same time as the charges heretofore preferred.

Very truly yours,
R. C. BLANTON, JR.,
(R. C. Blanton, Jr.),
Chief of Police.

RCBjr:rmp